

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

INDUSTRY

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In the Matter of the Arbitration Between

Name of Claimant(s)

Diane Richard

93-00552

Name of Respondent(s)

Merrill Lynch Pierce Fenner & Smith Inc  
John M. Walsh  
Stanley Rosenthal  
Katie Casey

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**REPRESENTATION**

For Claimant: Ira E. Weiner, Esq.

For Respondents: J. Michael Riordan, Esq. of the law firm of Bressler Amery & Ross.

**CASE INFORMATION**

Statement of Claim filed: February 12, 1993.

Claimant's Submission Agreement signed on: February 11, 1993.

Joint Statement of Answer filed by Respondents Merrill Lynch, Pierce, Fenner and Smith, Inc., Katie Casey, Stanley Rosenthal and John Walsh on: April 19, 1993.

Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc.'s ("Merrill Lynch") Submission Agreement signed on: May 6, 1993.

Respondent Catherine Casey's Submission Agreement signed on: April 14, 1993.

Respondent Stanley Rosenthal's Submission Agreement signed on: May 4, 1993.

Respondent John Walsh's Submission Agreement signed on: March 19, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:                      November 22, 1993 / Two Sessions  
   November 23, 1993 / Two Sessions  
   January 13, 1994 / Two Sessions  
   January 14, 1994 / Two Sessions

Hearing Location: NASD offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that Respondents discriminated against her on the basis of her pregnancy and breached the contract she entered into with Respondents. Claimant further alleged she has causes of action against Respondents for (1) failure to reinstate her after her family leave into the same or a comparable position (2) bad faith termination (3) retaliatory termination (4) termination without just cause (5) defamation (6) interference with prospective economic advantage (7) unpaid vacation pay (8) unpaid 1991 bonus and (9) four week's underpaid maternity leave. Claimant further alleged the abrupt, groundless, bad faith termination was more than a breach of contract and an act of pregnancy and/or sex discrimination, it was also an act of retribution and retaliation against Ms. Richard for the opposition she had expressed to what she reasonably perceived to be Merrill Lynch's acts of unlawful discrimination against her and because she would not quietly accept her undeserved demotion, Ms. Richard was summarily terminated. Claimant further alleged subsequently, in a further act of defamation, discrimination and retaliation, Merrill Lynch filed a U-5 Registration Form dated February 15, 1992, indicating to any potential employer within the securities industry that Ms. Richard has been terminated for failure to perform her duties and this, rendered Ms. Richard unemployable within her chosen industry, destroying her career and ultimately causing her Registration to lapse. Claimant further alleged she has suffered and continues to suffer humiliation, time loss, bodily injury, emotional stress, search difficulties; anxiety caused by lack of information, uncertainty and resultant planning difficulty; career, family and social disruption; and adjustment problems; all of which constitute compensable injuries. Claimant further alleged Respondents acts were in violation of the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 et seq.

Respondents maintained Claimant was an employee-at-will of Merrill Lynch, Pierce, Fenner and Smith, Inc. who could resign her employment with the firm or be discharged at any time with or without cause and at all times during her employment the Claimant received all compensation and benefits due her in accordance with Merrill Lynch, Pierce, Fenner and Smith, Inc. policies and procedures. Respondents further maintained Ms. Richard was terminated on January 20, 1992 for non-compliance with Company policy, specifically her willful refusal to follow the directions of her manager/supervisor to perform bona fide duties assigned to her in accordance with the Company's needs and procedures, and Claimant was not the subject of any discrimination by Respondents on the basis of her sex or pregnancy. Respondents further maintained Merrill Lynch has not defamed Richard or interfered with any alleged job search and these claims appear to be based upon statements which Merrill Lynch made in the Form U-5 which it was required by regulatory rules to file with the NASD and any other applicable regulatory bodies and the statements contained therein are truthful and protected by an absolute privilege. Respondents further maintained, insofar as Claimant was terminated in accordance with any applicable laws and procedures, she is not entitled to any further salary, compensation or other benefits from Respondents, she is not entitled to punitive damages and Respondents did not violate the New Jersey Law Against Discrimination.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$250,000.00, inclusive of compensatory and punitive damages but exclusive of attorneys' fees, interest and costs. Claimant also requested that Merrill Lynch's U-5 Registration Form be rescinded, that her Registration be reinstated, and that a positive reference from Merrill Lynch be provided for her.

Respondents requested dismissal of the Claimant's claim with prejudice and that all forum fees be assessed against the Claimant.

#### **OTHER ISSUES**

Upon motion by counsel for Respondents, Katie Casey was dismissed as a Respondent from the proceeding.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Merrill Lynch Pierce Fenner and Smith, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$8,832.58 plus simple interest at the rate of 6% per annum from January 20, 1992 until the date of payment of the award.
2. All claims against Respondents John M. Walsh and Stanley Rosenthal be and hereby are dismissed in all respects.
3. The Respondent Merrill Lynch Pierce Fenner and Smith, Inc. is directed to appropriately amend the Form U-5 of Diane E. Richard previously filed to reflect that her termination was without just cause.
4. The Respondent Merrill Lynch Pierce Fenner and Smith, Inc. shall reimburse the Claimant the sum of \$1,250.00 representing the claim filing fee and the hearing session deposit previously paid to the NASD.
5. Each party shall bear their respective costs including attorneys' fees.

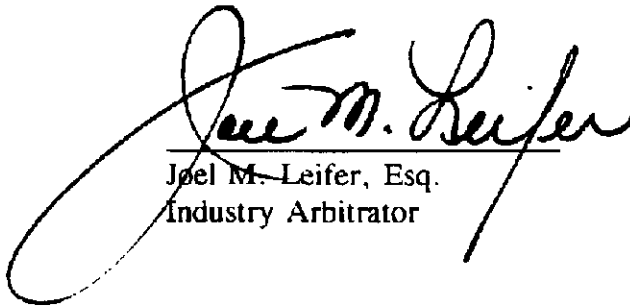
**FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

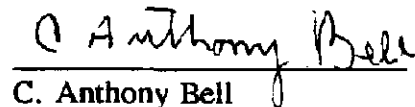
8 sessions x \$750.00 = \$6,000.00 less Claimant's hearing session deposit (\$750.00) = net \$5,250.00 due.

The Respondent Merrill Lynch Pierce Fenner and Smith, Inc. be and hereby is liable and shall pay to the NASD the sum of \$5,250.00 representing the balance of the forum fees.


ARBITRATORS' SIGNATURE



Joel M. Leifer, Esq.  
Industry Arbitrator



C. Anthony Bell  
Industry Arbitrator



Daniel Donovan, Esq.  
Industry Arbitrator

- This arbitrator dissents from the award issued in favor of the Claimant but not as to the dismissal of the claims against Respondents John M. Walsh, Stanley Rosenthal and Katie Casey.

Date of Decision: February 28, 1994